

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7440

Petition of Entergy Nuclear Vermont Yankee, LLC, and)
Entergy Nuclear Operations, Inc., for amendment of)
their Certificates of Public Good and other approvals)
required under 10 V.S.A. §§ 6501-6504 and 30 V.S.A.)
§§ 231(a), 248 & 254, for authority to continue after)
March 21, 2012, operation of the Vermont Yankee)
Nuclear Power Station, including the storage of spent-)
nuclear fuel –)

Order entered: 2/25/2010

ORDER RE REQUEST FOR SHOW-CAUSE ORDER

Introduction

In today's Order, the Public Service Board ("Board") determines that it will not consider, in the current docket, a request by Conservation Law Foundation ("CLF") to order Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. (collectively "Entergy VY") to show cause why the Vermont Yankee Nuclear Power Station ("Vermont Yankee") should not be shut down pending repairs of leaks at the station. Instead, the Board will open a separate proceeding to consider the issues raised by CLF's request.

Procedural History

In the current docket, the Board is considering the petition of Entergy VY for authority to continue operation of Vermont Yankee after March 21, 2012 (when its current authority ends). On January 14, 2010, the Department of Public Service ("Department") filed a letter stating that Entergy VY had not provided accurate information to the Department or its contractor Nuclear Safety Associates ("NSA") in conjunction with the reliability assessment of Vermont Yankee required by Act 189 of the 2007–2009 Vermont Legislature. The Department's letter indicated that Entergy VY had incorrectly informed the Department and NSA that no underground pipes

existed that fell within the statutory directive, when in fact such pipes did exist, thus raising questions about whether the requirements of Act 189 had been met. On January 25 and 26, respectively, CLF and the New England Coalition ("NEC") also filed requests for the Board to take further steps in response to the new information on underground piping, as well as the recent discovery of tritium in monitoring wells surrounding Vermont Yankee. NEC and CLF also stated that this new information indicated that sworn testimony provided by Entergy VY witnesses to this Board was inaccurate.

In its January 25 letter, CLF included a request that the Board order Entergy VY to show cause why "[p]ending complete repairs of any leaks, immediate shutdown of the facility should not be required to avoid environmental harm from the leaks of radioactive material and radionuclides into groundwater."¹

On February 3, 2010, Entergy VY filed a Memorandum in Opposition to CLF's show-cause request. On February 10, CLF and NEC each filed a reply to Entergy VY's Memorandum.²

Discussion and Conclusion

Among the arguments that Entergy VY presents in its Memorandum in Opposition is the claim that the requested show-cause order cannot be issued in Docket No. 7440. Entergy VY contends that CLF's request "does not pertain to or arise from the subject matter of this docket,"³ which involves a review of Entergy VY's petition for a certificate of public good, brought pursuant to 30 V.S.A. §§ 231 and 248 and Chapter 157 of Title 10, V.S.A., for continued operation of Vermont Yankee.

CLF has not responded to Entergy VY's argument that the current docket is not an appropriate proceeding in which to issue CLF's requested show-cause order. NEC responded to Entergy VY's argument by contending that the Board should not allow a "mere procedural

1. CLF letter of January 25, 2010, at 3.

2. Later on February 10, CLF filed a corrected page 9 to its reply.

3. Entergy VY Memorandum in Opposition at 7.

technicality" to defeat CLF's request, and that the Board should either re-open Docket No. 6545 (in which Entergy VY received its CPG) or open a new docket to consider CLF's request.

Entergy VY has not explained why the Board could not address CLF's request in the current proceeding. It is not unusual for the Board to expand the scope of pending proceedings, with notice and the opportunity for parties to present evidence and argument on the expanded issues.⁴ Nonetheless, given that no party has specifically advocated for such an expansion of the current docket, and in light of the procedural and substantive complexity of this docket as it currently exists, we conclude that it is reasonable and appropriate to open a separate investigation into the issues raised by CLF's request.

Therefore, we deny CLF's request to issue a show-cause order in the current docket. In a separate Order issued today,⁵ we are opening a new proceeding to investigate the issues raised by CLF's request.

SO ORDERED.

4. *See, e.g.*, Docket No. 7044, (In re Petition of Burlington Telecom), Order Expanding Scope of Docket, 1/8/2010.

5. That separate Order addressed the other issues raised by Entergy VY, CLF and NEC related to the show-cause request.

Dated at Montpelier, Vermont, this 25th day of February, 2010.

<u>s/James Volz</u>)	
)	PUBLIC SERVICE
)	
<u>s/David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: February 25, 2010

ATTEST: s/Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)